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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/814,339 | 04/01/2004 | Julio A. Abusleme | 108910-00128 | 5351 |
| 4372 | 7590 | 06/06/2005 | EXAMINER | |
| ARENT FOX PLLC 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036 | | | ZEMEL, IRINA SOPJIA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1711 | |

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/814,339 | ABUSLEME ET AL. | |
| | Examiner | Art Unit | |
| | Irina S. Zemel | 1711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 March 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 12 is/are allowed.
 6) Claim(s) 1-11 and 13-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7 and 9-11 recites the limitation "Foamable" composition or "Foamed" article in the preamble of each claim 5-7, 9 and 11. There is insufficient antecedent basis for this limitation in the claim because the base claim 4 does not recite a "foamable" composition, rather it recites a "thermoprocessable polymeric composition".

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,107,393 to Abusleme et al', (hereinafter "Abusleme") or US PreGrant Publication 2001/0003124 to Zolotnitsky et al., (hereinafter "Zolotnitsky").

The rejection of claim 1 stands as per reasons set forth in the previous office action. The same reasons are applicable to the rejection of newly added claim 13.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2, 3 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky and Abusleme.

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The rejection of claims 2 and 3 stands as per reasons of record. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky and Abusleme for the same reasons as claims 2 and 3 set forth in the previous office action.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky or Aabusleme in combination with Encyclopedia of Polymer Science and Engineering. Additives, (Hereinafter "Encyclopedia").

The rejection of claim 4 over the combined teachings of the above cited references stands as per reasons of record.

Claims 5-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky or Aabusleme in combinations with Encyclopedia and US Patent 4,304,713 to Perelman (hereinafter "Perelman") or US Patent 5,688,457 to Buckmaster et al ., (hereinafter "Buckmaster").

The rejection of claims 5-11 over the combined teachings of the above cited references stands as per reasons of record. Newly added claims 16 and 17 are rejected over the combined teachings of the above cited references for the same reasons as claims 7 and 10 set forth in the previous office action.

Response to Arguments

Applicant's arguments filed 3-7-2005 have been fully considered but they are not persuasive. Applicants argue that the claimed invention is drawn to "-copolymers of Ethylene (E) and Chlorotrifluoroethylene (CTFE) having an E content ranging from 0.5-20% by moles,

-wherein the total amount of E of the polymeric composition is 0.5 to

10%, the CTFE being the remaining part to 100%." (page 6 of the response, emphasis added). The applicants further state that Abusleme reference discloses terpolymers, having another monomer in addition to the claims E and CTFE comonomer, and the terpolymers of Abusleme do not anticipate the claimed copolymer. The Main argument is that "since the amount of E is the complement of the amount of CTFE to 100%, as stated in claim 1, the only monomers present in the polymeric compositions, and thus in the copolymers, of the presently claimed invention are E and CTFE." The Examiner can not agree with such interpretation of the claimed invention. The interpretation of the CTFE amount in either the copolymer or the composition being the remaining part of the copolymer or the polymeric compositions complimentary to the amount of E is clearly not warranted by the claim language. The claim language is an open language that does positively claims the amounts of separate components, but does NOT require the total amount of CTFE and E to add up to 100 % in either the copolymer or the composition. Similarly the claim language claiming "ethylene/chlorotrifluoroethylene copolymers" does not limit the claimed copolymers to being copolymer of only the two claimed components, rather it requires the presence of the two components in the copolymer without limiting the presence of additional comonomers in Any amounts consistent with the claimed amounts of E in the copolymer. Thus, the terpolymers disclosed in the Abusleme reference does read on and, therefore, anticipate the claimed copolymer. Same reasons apply to the copolymers disclosed in Zolotmitsky.

The arguments regarding unexpected results are noted, but it is not seen how the alleged unexpected results are relevant to claims 2 and 3. First of all, there are no results reported for the example 9 in the tables and the only mechanical property reported for example 9 the specification is elongation at break, which, in fact, is lower than for comparative results 10. It is not seen how that demonstrates alleged unexpectedly improved higher thermal stability. Furthermore, claims 2 and 3 are directed to the amount of E and to the MI, not the second melting temperature, and those are the limitation that should be addressed in showing of unexpected results for compositions claimed in claims 2 and 3. Furthermore, as discussed above, the claimed copolymers read on the copolymers disclosed in Abuselem and Zolotnitsy, and, therefore, the second meting temperature for the polymers of references satisfies the claimed limitation for the claimed copolymers.

Regarding the arguments pertinent to claims 4 on pages 9 and 10 of the arguments, the examiner points out that claim 4 does NOT claim foamable compositions. (In this regard, claims 5-7 and 9-11 were and still are rejected under 35 USC 112 as containing language having insufficient antecedent basis in the base claim).

Assuming that the arguments regarding foamable compositions are directed to claims actually claiming such composition, i.e., claims 5-11, the examiner wishes to point out that applicant's arguments are directed to the references individually. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Bukmaster and Perelman reference were merely cited to support the examiners position that PTFE powders are not only known nucleating agents, but also are known foaming agents, and, since the addition of nucleating agents would have been known and obvious as per teachings of encyclopedia, it would have been reasonable expected that compositions disclosed by Zolotnitsky and Abusleme modified with such nucleating agents can be foamed or are "foamable" as claimed in the preamble of claims 5-11. . The burden was shifted to the applicant to provide convincing factual evidence to the contrary, i.e., that compositions disclosed by Zolotnitsky and Abusleme modified with nucleating agents are NOT foamable. The applicants provides no evidence whatsoever to that effect.

Therefore, the invention as claimed, with exception of claims 12, is still considered to be unpatentable as per discussions above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ISZ



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